(2)

Supreme Court, U.S.
FILED
MAR 6 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-175

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

NORFOLK & WESTERN RAILWAY COMPANY, *et al.*,
Petitioners,

v.

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR RESPONDENTS IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

JOHN O'B. CLARKE, JR.
HIGHSAW & MAHONEY, P.C.
Suite 210
1050 17th Street, N.W.
Washington, D.C. 20036
(202) 296-8500
Attorney for Respondents Brotherhood of Maintenance of Way Employes, et al.

Date: March 6, 1987

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

80

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-175

NORFOLK & WESTERN RAILWAY COMPANY, *et al.*,
Petitioners,

v.

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR RESPONDENTS IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

Respondent Brotherhood of Maintenance of Way Employes [hereinafter, "BMWE"], and its officials who are respondents, respectfully submit that this Court should defer consideration of the petition for a writ of certiorari in this case until after this Court enters its ruling in Sup. Ct. No. 86-39, *Burlington Northern R.R. v. BMWE.*

COUNTERSTATEMENT OF THE CASE

Petitioners' Statement of the Case contains several factual allegations with which respondents disagree. However, these factual disputes are irrelevant in view of both the Court of Appeals' decision and petitioners' admission that: "This case has its genesis in a labor dispute between BMWE and the Maine Central Railroad and its wholly owned subsidiary, the Portland Terminal Company . . . ." Pet. at 3. Therefore, respondents will not waste the Court's time by addressing those factual disputes in this response.

ARGUMENT

Respondents BMWE, *et al.*, respectfully submit that the issues presented by this petition are important and deserve the attention of this Court. This Court obviously agrees with this assessment of the importance of the issues presented here, for this Court issued a writ of certiorari to the United States Court of Appeals for the Seventh Circuit in Sup. Ct. No. 86-39, *Burlington Northern R.R. v. BMWE*, to examine the same issues raised by this petition. That case was argued before this Court on February 23, 1987.

Since this Court is presently considering the issues which petitioner seeks to raise by this petition, respondents BMWE, *et al.*, respectfully submit that this Court should defer consideration of the petition for a writ of certiorari in this case until after the ruling in *Burlington Northern* is issued. If, as respondents BMWE, *et al.*, assert should occur, this Court affirms the decision by the Seventh Circuit in the *Burlington Northern* case, respondents submit that the petition for a writ of certiorari in this case should be denied. However, if this Court reverses the Seventh Circuit's decision, respondents respectfully request that they then be granted an opportunity to file a supplemental brief concerning the proper disposition of this case in light of that ruling.

CONCLUSION

Respondents BMWE, *et al.*, respectfully submit that the consideration of this case should be deferred pending resolution of Sup. Ct. No. 86-39, *Burlington Northern R.R. v. BMWE.*

Respectfully submitted,

JOHN O'B. CLARKE, JR.
HIGHSAW & MAHONEY, P.C.
Suite 210
1050 17th Street, N.W.
Washington, D.C. 20036
(202) 296-8500
Attorney for Respondents Brotherhood of Maintenance of Way Employes, et al.

Date: March 6, 1987